

IN THE UNITED STATES OF ARKANSAS  
EASTERN DISTRICT OF ARKANSAS  
NORTHERN DIVISION

DOUGLAS W. RUSH

PLAINTIFF

vs.

CASE NO. 1:07cv0001 BSM

BARBARA PERRYMAN, ET AL.

DEFENDANTS

**ORDER**

Pending before the court is Defendants' motion for reconsideration of the court's denial of their motion for protective order. The court previously denied Defendants' motion for protective order because the motion failed to contain a Fed. R. Civ. P. 26(c) certification. That deficiency has now been remedied.

Defendants object to Plaintiff's notice to take the depositions of Dan Lindsey, Don Barnes, and Karla Rush. In support of their objection, Defendants assert that they are protected from additional discovery until the issue of qualified immunity is resolved. Defendants have raised the qualified immunity issue in a motion for summary judgment which is pending before the court. Defendants also contend that Lindsey is outside the subpoena power of the court, that Barnes is not available for the date noticed, and that Rush, who is an officer of Defendant Ozarka College, has no relevant information about Plaintiff's termination.

Plaintiff's response is that he needs the depositions in order to respond to Defendants' motion for summary judgment. Further, he argues that he asked the court, in his response to Defendants' motion for summary judgment, to hold its ruling in abeyance until he has deposed Barnes and Rush. He further argues that he is entitled to depose Lindsey because Lindsey is one of the defendant's current employees.

The court would normally grant Defendants' motion because the issue of qualified immunity should be resolved prior to the taking of additional discovery; however, Plaintiff seeks the additional discovery in order to adequately respond to Defendants' motion for summary judgment on the issue of qualified immunity. Defendants filed their motion for summary judgment on April 30, 2008, prior to the discovery cutoff date of June 6, 2008. Plaintiff sought an extension of 11 days to respond but did not take steps during that time to take the depositions he has now noticed. Plaintiff, however, advised Defendants and the court that he wanted to take additional depositions in response to Defendants' motion for summary judgment and requested that the court not rule on the motion until he had that opportunity. Plaintiff's request is therefore timely.

The court finds that Plaintiff is entitled to fully develop his response to the qualified immunity defense and that he can take the depositions of Rush, Barnes and Lindsey, although the latter should take place at a place within 100 miles of Lindsey's residence.

Accordingly, the motion for reconsideration of the denial of the motion for protective order (doc. no. 59) is denied.

IT IS SO ORDERED this 9<sup>th</sup> day of June, 2008.

  
UNITED STATES DISTRICT JUDGE